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Legal Guide S-11

FAQs and Tips on GIFT CERTIFICATES AND GIFT CARDS *January, 2004*

You want to give a friend a gift, but your friend "has everything" or you don't know what to give.

By giving a gift certificate or a gift card, you make it possible for your friend to purchase the particular item or product that he or she wants.

Gift certificates and gift cards are covered by special rules adopted by the California Legislature.¹ The most important rules are that –

- Gift certificates cannot be offered in a manner that is untrue or misleading,² and
- Most gift certificates and gift cards sold by retail sellers for use with the seller and its affiliates cannot contain an expiration date or a service fee.³

This Legal Guide answers common questions about gift certificates and gift cards sold after January 1, 2004. Since most of the answers also have exceptions, be sure to read the entire answer.

Frequently Asked Questions About Gift Certificates and Gift Cards

Q.1. Are a "gift certificate" and a "gift card" the same thing?

A. Yes. However, if a gift card can be used with multiple sellers of goods or services that are not affiliated, it is *not* a gift certificate and is not subject to the rules described in this Legal Guide.⁴ If such a gift card contains an expiration date, it must be printed on the card in order for this exemption to apply. Also, the rules described in this Legal Guide do not apply to prepaid calling cards issued solely to provide an access number and authorization code for prepaid calling services.⁵

Q.2. Can a gift certificate or gift card contain an expiration date?

A. No. However, this general rule is subject to the following exceptions:

- A gift card that can be used with multiple sellers of goods or services that are not affiliated may contain an expiration date. If so, the expiration date must be printed on the card.
- A gift certificate or gift card that is sold to the purchaser as a gift for another person (the “recipient”) may state a date by which the recipient must redeem the certificate or card. Since this is an exception to the “no expiration date” rule, a seller that chooses to state a redemption date on a gift card or gift certificate must give the purchaser a full refund of the amount paid for the certificate or card if the recipient does not redeem it by the redemption date.⁶
- Certain gift certificates or gift cards sold after January 1, 1998 are not subject to any of the rules discussed under “Frequently Asked Questions.” To be exempt, these gift certificates or gift cards must contain an expiration date in at least 10-point type on the front and must be either:
 - Distributed by the issuer to a consumer without charge under an awards, loyalty or promotional program;⁷ or
 - Sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes, if the expiration date is 30 days or less after the date of sale;⁸ or
 - Issued for a food product, such as a grocery item.⁹

Q.3. Can a gift certificate or gift card contain a service fee?

A. No. A gift certificate or gift card cannot contain a service fee, including a fee for dormancy (non-use).¹⁰

However, a gift card may contain a dormancy fee if all of the following are true:

- The value remaining on the gift card is \$5.00 or less each time the fee is assessed; and
- The dormancy fee is \$1.00 per month or less; and
- The card has been inactive for 24 consecutive months (for example, no purchases, “reloading,” or balance inquiries); and
- The holder may reload or add value to the card; and
- The card contains a statement in at least 10-point type stating the amount and frequency of the fee, that the fee is triggered by inactivity, and at what point the fee will be charged. This statement may be on the front or back of the card, but must be visible to the purchaser prior to purchase.¹¹

Q.4. Can the holder of a gift certificate or gift card redeem it for cash?

A. This depends on the policy of the seller. The gift certificate law states that a seller must redeem a gift certificate or gift card sold after January 1, 1997 for its cash value, or replace it with a new certificate or card at no cost.¹² However, California's Legislative Counsel has concluded that a seller is not required to redeem a gift certificate in cash when requested by a consumer.¹³ Thus, some gift certificate sellers redeem the gift certificate for cash or a combination of merchandise and cash, while some issue a new certificate for any balance remaining after the original certificate is redeemed. A gift certificate or gift card without an expiration date is valid until it is redeemed or replaced.¹⁴

Sometimes, a gift certificate or gift card is sold to the purchaser as a gift for another person (the "recipient"). In this case, the seller may choose to state a date on the gift certificate or gift card by which the recipient must redeem it. Since an expiration date normally is not permitted by the gift certificate law, a seller that chooses to state a redemption date on a gift card or gift certificate must give the purchaser a full refund of the amount paid for the certificate or card if the recipient does not redeem it by the redemption date.¹⁵

Q.5. Can the holder of a gift card that is subject to a service fee use it to purchase a gift card that is not subject to a service fee?

A. The gift certificate law does not provide a clear answer to this question. The gift certificate law requires the issuer of a gift certificate or gift card to honor it, but also limits that obligation to either redeeming the certificate or card in cash or replacing it with a new one. Since California's Legislative Counsel has concluded that the issuer (not the holder) may choose between these two methods,¹⁶ the likely answer is that the issuer may set its own policy.

Q.6. What happens if the seller of the gift certificate or gift card files bankruptcy?

A. A gift certificate or gift card sold by a seller that seeks bankruptcy protection may have no value. However, the holder of the certificate or card may have a claim against the bankruptcy estate.

Sellers that file "Chapter 11" (reorganization) bankruptcy intend to stay in business, so they typically will ask the bankruptcy court for permission of honor gift certificates in an effort to maintain good customer relations.

If the bankruptcy court does not allow gift certificates or gift cards to be honored, or if the seller files "Chapter 7" (liquidation) bankruptcy, holders of gift certificates or gift cards are creditors in the bankruptcy case. They have relatively high priority among unsecured creditors in a Chapter 7 case, and may receive some percentage of the certificate's or card's value, but only if the bankruptcy estate has enough assets to pay claims. For information on filing a claim, and other basic information on bankruptcy, see "Consumer Tips on Retail Store Bankruptcies," under the "Publications" button at www.dca.ca.gov.

A recently-adopted California law is intended to help gift certificate and gift card holders when the seller declares bankruptcy. It requires a seller in bankruptcy to honor gift certificates issued before the date of the bankruptcy filing.¹⁷ No court has ruled on the effectiveness of this law.

Q.7. Where can I get a copy of the gift certificate law?

A. The gift certificate law is California Civil Code Sections 1749.45-1749.6. The California Civil Code is available at county law libraries and law school libraries. Look in the "County Government" and business listings of the telephone book's white pages. The Civil Code also is available on the Internet at www.leginfo.ca.gov under the "California Law" button.

Tips for Purchasers of Gift Certificates or Gift Cards

- Ask about the seller's redemption policy. If the recipient can only redeem the gift certificate or gift card for merchandise, or for a particular kind or class of merchandise, does this affect your decision to purchase or give the certificate or card?
- In the case of a gift card, ask the seller if the recipient can add value or "reload" the card.
- Ask the seller about its policies on returning merchandise. A recipient who redeems a gift certificate or gift card for merchandise will be subject to those policies.
- Consider purchasing a gift certificate or gift card from a retailer for use with it and its affiliates. These gift certificates and gift cards are subject to the protections of the gift certificate law. On the other hand, gift certificates and gift cards that can be used with multiple sellers that are not affiliated are not covered by the gift certificate law.¹⁸

Tips for Recipients of Gift Certificates or Gift Cards

- Ask about the seller's redemption policy. Some merchants may redeem the gift certificate for cash or a combination of merchandise and cash, while some may issue a new certificate for any balance remaining after the original certificate is redeemed.
- In the case of a gift card, ask the seller if value can be added to the card or if it can be "reloaded." Also, ask about any service or dormancy fee.
- Use any remaining value on a gift certificate or gift card. If a gift certificate or gift card has a low balance, make a purchase with it and pay the difference out of pocket.
- Ask the seller about its policies on returning merchandise.

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NOTICE: We attempt to make our Legal Guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.

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Endnotes

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- ¹ Statutes of 1996, chapter 933 (AB 2466), Statutes of 1997, chapter 472 (AB 1054), Statutes 2002, chapter 997 (AB 2473), and Statutes 2003, chapter 116 (AB 1092), which enacted Sections 1749.45, 1749.5, and 1749.6 of the California Civil Code; and Statutes of 1999, chapter 907, which enacted Section 17537.11 of the California Business and Professions Code.
 - ² Business and Professions Code Section 17537.11(a).
 - ³ California Civil Code Sections 1749.45(a), 1749.5(a).
 - ⁴ California Civil Code Section 1749.45(a).
 - ⁵ California Civil Code Section 1749.45(b). California Business and Professions Code Section 17538.9 permits certain fees and practices with respect to prepaid calling cards.
 - ⁶ California Civil Code Sections 1749.5(a)(1),(f).
 - ⁷ California Civil Code Section 1749.5(d)(1).
 - ⁸ California Civil Code Section 1749.5(d)(2).
 - ⁹ California Civil Code Section 1749.5(d)(3); California Attorney General Opinion No. 00-701 (October 23, 2000). The Attorney General's Opinion concluded that a gift certificate for a meal sold by a restaurant may not contain an expiration date.
 - ¹⁰ California Civil Code Section 1749.5(a)(2).
 - ¹¹ California Civil Code Section 1749.5(e). These rules have no effect on service fees imposed before January 1, 2004. (Statutes 2003, chapter 116, Section 4.)
 - ¹² California Civil Code Section 1749.5(b).
 - ¹³ California Civil Code Section 1749.5(b); California Legislative Counsel, Opinion No. 1488 (February 11, 1997) Gift Certificates.
 - ¹⁴ California Civil Code Section 1749.5(c).
 - ¹⁵ California Civil Code Section 1749.5(f).
 - ¹⁶ California Legislative Counsel, Opinion No. 1488 (February 11, 1997) Gift Certificates.
 - ¹⁷ California Civil Code Section 1749.6(b) (Statutes 2002, chapter 997 (AB 2473)).
 - ¹⁸ California Civil Code Section 1749.45(a).